

STATE OF MICHIGAN
COURT OF APPEALS

ANITA GEORGIEVSKI,

Plaintiff-Appellant,

v

PETAR GEORGIEVSKI,

Defendant-Appellee.

UNPUBLISHED

February 3, 2004

No. 242900

Macomb Circuit Court

LC No. 00-006744-DO

Before: Owens, P.J., and Schuette and Borrello, JJ.

PER CURIAM.

Plaintiff appeals by right from a judgment of divorce. The main contention in these proceedings involves the only significant asset of the parties, the marital home. Testimony clearly indicated that a substantial portion of the marital home was purchased by defendant's mother. Plaintiff argues that defendant's mother's contribution was a gift, but defendant contends there was an agreement to repay the funds to his mother. The trial court ordered the parties to sell the marital home and awarded the first \$187,407.25 to defendant's parents. Plaintiff appeals, alleging in part that she was entitled to a portion of the proceeds. We affirm.

This was a relatively short marriage. The parties were married on July 5, 1998, and plaintiff filed for divorce on December 6, 2000, after learning of her husband's infidelity. Shortly after the couple married, the parties bought a home for \$231,232.06. The couple contributed \$43,824.81 toward the home with funds received as gifts from their shower and wedding. Defendant's mother supplied the balance of \$187,407.25 at closing by mortgaging two other properties she owned. Plaintiff denied the existence of any debt and claimed she was unaware that defendant's mother had mortgaged property to pay the balance on the marital home. Defendant contends there was at least a verbal agreement to repay his mother, and defendant offered into evidence two checks made payable to his mother to support his claim. Plaintiff denied any knowledge of these checks.

In the judgment of divorce, the trial court awarded the first \$187,407.25 of the net proceeds from the sale of the marital home to defendant's parents. Plaintiff argues that the trial court erred in finding that the money contributed by defendant's parents toward the purchase of the marital home was a loan rather than a gift. We disagree.

We review issues of jurisdiction involving the interpretation of statutes de novo. *Lapeer County Clerk v Lapeer Circuit Judges*, 465 Mich 559, 566; 640 NW2d 567 (2002). In a divorce

action, we review the trial court's findings of fact for clear error. *McNamara v Horner (After Remand)*, 255 Mich App 667, 669; 662 NW2d 436 (2003), citing *Sparks v Sparks*, 440 Mich 141, 151; 485 NW2d 893 (1992). "A finding is clearly erroneous if, after a review of the entire record, the reviewing court is left with a definite and firm conviction that a mistake has been made." *Id.*, citing *Beason v Beason*, 435 Mich 791, 802; 460 NW2d 207 (1990). If the findings of fact are upheld, we then decide whether, in light of those facts, the disposition was fair and equitable. *McNamara, supra* at 670. "The dispositional ruling is discretionary and should be affirmed unless this Court is left with the firm conviction that the division was inequitable." *Id.*, citing *Sands v Sands*, 442 Mich 30, 34; 497 NW2d 493 (1993).

The circuit court's jurisdiction over divorce proceedings is conferred by statute. *Smith v Smith*, 218 Mich App 727, 730; 555 NW2d 271 (1996); MCL 552.6; MCL 552.9. MCL 552.12 grants the circuit court the power to "award issues, to decree costs, and to enforce its decrees, as in other cases" in equity. The "judgment of divorce must include a 'determination of the parties' property rights.'" *Byington v Byington*, 224 Mich App 103, 110; 568 NW2d 141 (1997), quoting MCR 3.211(B)(3), citing *Yeo v Yeo*, 214 Mich App 598, 601; 543 NW2d 62 (1995). MCL 552.19 grants the circuit court the power to distribute marital assets as follows:

Upon the annulment of a marriage, a divorce from the bonds of matrimony or a judgment of separate maintenance, the court may make a further judgment for restoring to either party the whole, or such parts as it shall deem just and reasonable, of the real and personal estate that shall have come to either party by reason of the marriage, or for awarding to either party the value thereof, to be paid by either party in money. [*Id.*]

In the present case, the trial court listened to conflicting testimony from plaintiff, plaintiff's mother, and defendant's mother before determining that defendant's mother had contributed \$187,407.25 toward the purchase of the marital home as a loan rather than a gift. The trial court in a divorce proceeding "has the best opportunity to view the demeanor of the witnesses and weigh their credibility." *Stoudemire v Stoudemire*, 248 Mich App 325, 339; 639 NW2d 274 (2001), citing *Pelton v Pelton*, 167 Mich App 22; 421 NW2d 560 (1988). Based on the testimony of defendant's mother concerning her intent and the evidence admitted at trial demonstrating some repayment made by the parties, the trial court's finding that the money was a loan rather than a gift was not clearly erroneous.

The trial court properly exercised its equitable powers by awarding repayment of a loan. Plaintiff's argument that her former in-laws were not a party to this action is misplaced. Trial courts routinely order debts to be paid in divorce proceedings to parties not named in the divorce action.

In the present case, the trial court ordered the marital home sold, the first \$187,407.25 of the sale proceeds paid to defendant's parents to repay their loan, and the balance of the proceeds (representing the parties' equity in the marital home) divided 60% to plaintiff and 40% to defendant. Such an order was proper.

Affirmed.

/s/ Donald S. Owens

/s/ Bill Schuette

/s/ Stephen L. Borrello